IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MR. JUSTICE A.K.BASHEER
&
THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

WEDNESDAY, THE 21ST NOVEMBER 2007 / 30TH KARTHIKA 1929

WP(C).No. 11918 of 2007(R)

PETITIONERS:
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1. **L.CHELLAYAN, KALAMATH VEEDU, PANNIYODE P.O., THIRUVANANTHAPURAM.**

2. **M.T.JOHNSON, MARUTHUMMOODU VEEDU, KALLAMAM, PANNIYODE P.O.**

3. **B.RAJAN, VALIYAVILLU VILA, PANNIYODE P.O.**

BY ADV. SRI.D.SOMASUNDARAM

RESPONDENTS:
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1. **JOINT REGISTRAR OF CO-OPERATIVE SOCIETIES, (GENERAL), THIRUVANANTHAPURAM.**

2. **VEERANAKAVU RESIDENT WELFARE CO-OPERATVE SOCIETY LTD.NO.T.1580, THIRUVANANTHAPURAM REPRESENTED BY ITS SECRETARY.**

3. **VEERANAKAVU SERVICE CO-OPERATIVE BANK LTD. NO.516, VEERANAKAVU, THIRUVANANTHAPURAM REP. BY ITS SECRETARY.**

R2 BY ADV. SRI.B.RAGUNATHAN
SRI.V.G.ARUN
SRI.T.R.HARIKUMAR
BY GOVERNMENT PLEADER SRI. NOBLE MATHEW

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 21/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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J.B.KOSHY & T.R.RAMACHANDRAN NAIR, JJ.

W.P.(C).NO. 11918 OF 2007
and
W.P.(C).NO. 25512 OF 2006

Dated this the 11th day of April, 2007.

REFERENCE ORDER

Koshy, J.

These two writ petitions are relating to the same subject. We may consider the facts of W.P.(C).No.11918/2007. The petitioners were elected as Board of Directors of Veeranakavu Resident Welfare Co-operative Society, on 15.10.2005 and normally they can continue up to 15.10.2010. There were only eight elected members in the Board. Therefore quorum for the Board is five. But by Ext.P6 order, four persons were disqualified. Consequently, society was also superseded due to lack of quorum and Ext.P6 is questioned mainly with regard to the reason for disqualifying the first petitioner. If one of the petitioners are not disqualified, there will be sufficient quorum. First petitioner was disqualified because he had taken a loan on 30.9.1991 from the 3rd respondent, Society. Loan was nor repaid in full. Since the amount demanded was not paid, the matter went to arbitration. However, after sending repeated notice, the matter was settled on 15.9.2006 and the entire loan amount with interest was paid and there after no liability. That fact is admitted in Ext.P6 also. It is the case of the petitioner that when notice of disqualification was given, he was not a defaulter. When Ext.P6 order was passed, consequent to the above also he is not a defaulter. Therefore he cannot be declared as a defaulter. Under

Rule 44(1)(c)(i), if a person is a defaulter to the Society or any other Society in respect of any loan, he is disqualified to become a member of the Board of Directors. Under Rule 2(a), an elected member also becomes disqualified if subsequently seen disqualified under above said Sub rule. Rule 44(3) provides that if any person become disqualified to be a member of the committee Registrar may issue notice and declare him as a defaulter, till that date he can continue as a member. It is the case of the petitioner that at the time of issue of notice he was not a defaulter and therefore Registrar cannot declare him as a defaulter. In support of that preposition, the decision reported in *Thomman Itticheriyanthu v. State of Kerala* (1978 KLT 887) was cited, wherein, it was held that disqualification is attracted only if at the time when proceedings are initiated he is a defaulter. In *Madanamohan Kartha v. Elamkulam Service Co-operative Bank* (1983 KLT 640) also, that part is upheld. The learned counsel for the respondents, submitted that at the time of election he was disqualified and therefore his election itself was wrong. Even though it was not challenged in appropriate time because of ignorance of that fact at the time of election. It was also pointed out that even after became elected, demand notices were issued and he did not pay the amount and cleared the debts, till 15.9.2006. It is submitted that even though at the time of issuing notice he was not a defaulter, the default can be made use of, and relied on the decision of Division Bench of this court in *Mathew v. Deputy Registrar, Co-operative Societies* (1979 KLT 818), they also relied on

the decision of Madanamohan Kartha's case(Supra) and submitted that the above view was accepted in that case. There is apparent conflict between the two Division Bench decisions and therefore we are of the opinion that authoritative pronouncement is necessary by the Full Bench of this court. Hence we adjourn the matter to be placed before the Hon'ble Chief Justice for appropriate orders.

J.B.KOSHY, JUDGE.

T.R.RAMACHANDRAN NAIR, JUDGE.

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